

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LEWIS FLOYD, JR.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:09-cv-916-TMP
)	
DUANE CORDER, individually and)	
in his official capacity as a deputy)	
sheriff of the Jefferson County)	
Sheriff's Dept.,)	
)	
Defendants.)	

ORDER

The magistrate judge filed his report and recommendation in this action on December 23, 2009, recommending that the motion to dismiss be granted in part and denied in part. No objections have been filed.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's report is due to be and hereby is ADOPTED and the recommendation is ACCEPTED.¹ Accordingly, the motion to dismiss filed by

¹The report and recommendation states, "There is no allegation that, in arresting plaintiff and using force to do so, [Officer Corder] acted beyond his authority as a peace officer." The court finds, as correctly stated elsewhere in the report, plaintiff does allege a claim for excessive force pursuant to 42 U.S.C. § 1983. The report is otherwise adopted and the recommendation accepted.

defendant Duane Corder (Doc. #5) is GRANTED IN PART and DENIED IN PART. It is ORDERED that all claims against defendant in his official capacity are DISMISSED WITH PREJUDICE, and that all state-law claims against him in his personal capacity are DISMISSED WITH PREJUDICE. The motion to dismiss is DENIED insofar as it asserts immunity with respect to the federal § 1983 claim against him in his personal capacity.

This case is again REFERRED to the magistrate judge for further proceedings.

DONE and ORDERED, this the 1st of February 2010.

A handwritten signature in cursive script, reading "Inge Prytz Johnson", written in black ink.

INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE